

## **Assembly Bill No. 1876**

### **CHAPTER 820**

An act to add Article 9 (commencing with Section 25395.1) to Chapter 6.8 of Division 20 of, to add Section 25570.4 to, and to repeal and add Section 25570.3 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor October 12, 1995. Filed  
with Secretary of State October 13, 1995.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1876, Richter. Hazardous substances: private site management.**

(1) Existing law, the California Expedited Remedial Action Reform Act of 1994, among other things, requires the Department of Toxic Substances Control, upon the request of a responsible person to have a site where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located remediated pursuant to the act, to forward to the Site Designation Committee, in the California Environmental Protection Agency, the request, along with the department's recommendations. The act authorizes the committee to select a site for remediation pursuant to the act if the site meets specified requirements. The act further requires the department to notify all known potentially responsible persons for each selected site, authorizes the department to enter into an enforceable agreement with the responsible person to take response actions at a site, and specifies the matters required to be included in a remedial action plan. The act creates the Expedited Site Remediation Trust Fund, and authorizes the department to expend money in the trust fund, upon appropriation by the Legislature, to implement those provisions relating to expedited site remediation. The act requires the Attorney General, upon the request of the department, or the administrator of the trust fund, to commence actions to recover any response costs covered by the state in connection with remedial action against the responsible person or persons.

This bill would authorize private site managers, as defined, to conduct investigations of potential hazardous substance release sites using preliminary endangerment assessment procedures that are approved by the department, as specified. The bill would, if, upon completion of a site investigation, a private site manager or the department determines that a significant release of a hazardous substance has occurred, or is likely to occur, authorize a project proponent, as defined, to submit an application to the department

requesting that a response action be conducted in accordance with those provisions regulating private site management, and would proscribe procedures for the implementation of that response action.

The bill would require a private site manager, upon the completion of a response action, to file a request for a certificate of completion from the department containing specified information and documentation relating to the conduct of the response action, and would require the department to approve or reject the request for a certificate of completion within 30 days from the date of submittal by the private site manager. The bill would require the department, if it approves a request for a certificate of completion, to prepare a certification including specified information and requirements for ongoing reporting, operation, and maintenance of a site.

The bill would require the department to conduct audits of a minimum of 25% of sites where a private site management team has conducted a site investigation or response action without oversight by the department, except as provided.

The bill would prescribe enforcement procedures and criminal penalties for specified acts by a private site manager or member of a private site management team, thereby imposing a state-mandated local program by creating new crimes.

The bill would require that all penalties collected pursuant to those provisions be deposited into the Expedited Site Remediation Trust Fund for expenditure by the department, upon appropriation by the Legislature, to administer and enforce provisions relating to private site management.

The bill would require the department, in consultation with the Office of Environmental Health Hazard Assessment, to adopt minimum standards of performance for private site managers and private site management team members, and would require those standards to be adopted within 6 months from the date that the department first accepts applications from project proponents.

(2) Existing law, the Environmental Quality Assessment Act of 1986, requires, among other things, the Director of Environmental Health Hazard Assessment, in consultation with various state agencies, to develop, adopt by regulation, and publicize criteria for the voluntary registration of environmental assessors, as specified.

This bill would repeal those provisions and instead require the director, in consultation with various state agencies, to develop, adopt by regulation, and publicize criteria for 2 classes of environmental assessors. The bill would authorize the director to appoint an ad hoc advisory committee to assist in developing the requirements for the registration of environmental assessors, and would proscribe procedures for the registration, renewal, and rescission of an environmental assessor's registration.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the



state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Article 9 (commencing with Section 25395.1) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 9. Private Site Management

25395.1. As used in this article, the following terms have the following meaning:

(a) “Private site manager” means an individual who is registered as a class II environmental assessor pursuant to Section 25570.3.

(b) “Private site management team” means a group coordinated by a private site manager, which may consist of any or all of the following persons:

(1) A person holding a four-year bachelor of science degree from an accredited college or university who has done significant work in biological, chemical, physical, environmental or soil science, environmental health, environmental engineering, toxicology, industrial hygiene, or a related field.

(2) An environmental engineer holding a four-year bachelor of science in engineering degree from an accredited college or university.

(3) An engineer registered in the State of California.

(4) A geologist registered in the State of California.

(5) A certified hydrogeologist registered in the State of California.

(6) A certified engineering geologist registered in the State of California.

(7) A geophysicist registered in the State of California.

(8) An industrial hygienist or safety engineer registered in the State of California.

(9) A process engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(10) A petroleum engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(11) The necessary technical support personnel and equipment operators, as determined by the private site manager.

(c) “Project proponent” means any person who applies to the department for approval to conduct the response to a release or threatened release of hazardous substances pursuant to this article.

(d) “Independent,” as used in subdivision (b) of Section 25395.3, means that the private site manager or the members of the private site management team meet all of the following requirements:

(1) The site manager or team member is not an employee of the project proponent, a known responsible party, or a prospective buyer of the site property.

(2) The site manager or team member is not a general partner, or a limited partner, with any project proponent, known responsible party, or prospective buyer of the site property.

(3) The site manager or team member is not a shareholder in the project proponent entity, known responsible party, or a prospective buyer of the site property.

(4) The site manager or team member does not receive any source of income from the project proponent, known responsible party, or a prospective buyer of the site property, other than the payment of fees for professional services.

(5) The site manager or team member does not accept, or agree to accept, any payment that is in any way contingent upon the completion of a response action of the site as a private site management project.

25395.2. A private site manager may conduct investigations of potential hazardous substance release sites using preliminary endangerment assessment procedures approved by the department. If, upon completion of an investigation, a private site manager determines that because a significant release of hazardous substances has not occurred, site conditions do not require any further investigation or remedial action, the private site manager may submit a report to the department certifying that no further action is required at the site. Unless the department issues a written notice of disagreement to the private site manager within 60 days from the date of receipt of the report, the department shall be deemed to be in agreement with the report and shall designate the site as a site which requires no further action. The department may subsequently change that site designation status upon receipt and confirmation of evidence that the physical environment of the site conditions differ from the findings of a report submitted by a private site manager. The department shall not designate a site under this section as a site that requires no further action if the release of hazardous substances has caused, or threatens to cause, discharges to waters of the state.

25395.3. If, upon completion of a site investigation, a private site manager or the department determines that a significant release of a hazardous substance has occurred, or is likely to have occurred, a project proponent may submit an application to the department requesting that a response action be conducted under private site management pursuant to this article. The application for a response action shall include both of the following:



(a) Where a site investigation was conducted by a private site manager, the private site manager shall provide the department with a report of the site findings based on the investigation. In all cases, the application shall set forth reasons why the site is appropriate for a private response action and management based on the information available at the time that the application is submitted to the department. Sites shall be deemed appropriate for private site management if all the following conditions exist:

(1) There is a substantial likelihood that no further significant environmental damage or exposure to humans will occur as the response action is implemented.

(2) The site is not adjacent to residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(3) The site is not, or is not being used as, residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(4) Releases of hazardous substances at the site did not result in discharges to groundwater.

(5) An enforceable agreement that specifies how response action will be conducted is not applicable to the site.

(b) The name and a statement of qualifications of any private site manager proposed for the site. The proposed private site manager shall be independent of the project proponent, all known responsible parties, and prospective buyers of the site property.

25395.4. (a) If the department approves an application for private site management, a private site management team shall be designated to perform the activities authorized by this article. The professional staff of the private site management team shall be comprised, at a minimum, of persons with qualifications and levels of experience which shall be specified by the department based upon the conditions at the site which require response action.

(b) At least one member of the proposed team shall have demonstrable experience or training in public participation, risk communication, and community involvement, except that the member shall not be required to be a registered or certified professional. Each member of the proposed team shall be independent of the project proponent, known responsible parties, and prospective buyers of the site property.

(c) If, at any time, the documented physical conditions at the site change or physical conditions previously unknown to the department are identified, the department may rescind approval of the proposed project or may require the private site management team to include additional professional staff members with expertise appropriate to the physical conditions at the site. The addition of new professional level team members proposed by the private site

manager shall be approved by the department, but the department shall not unreasonably withhold that approval.

25395.5. (a) If the private site management team determines that the response action will include a removal or remedial action, the approved private site management team shall prepare a draft removal action workplan or remedial action plan. The draft removal action workplan or remedial action plan may be prepared without oversight by the department, but shall be prepared in accordance with all of the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and other applicable regulations and guidance documents adopted or issued by the department.

(b) The private site management team shall submit the draft removal action workplan or remedial action plan to the department for approval, and the department shall approve or reject the workplan or remedial action plan within 60 days from the date of submittal by a private site manager. If a plan is rejected, the department shall identify the principle reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the plan.

25395.6. (a) The private site management team shall, in the case of sites selected pursuant to Section 25396.6, prepare a remedial design for the implementation of the response action that is selected in the final remedial action plan that is prepared and approved in accordance with the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396), and applicable regulations and guidance documents adopted or issued by the department. The remedial design may be prepared by the private site management team without oversight by the department, and shall be submitted to the department for approval.

(b) The department shall approve or reject a final remedial design within 60 days from the date of submittal by a private site management team. If a design is rejected, the department shall identify the principle reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the design.

25395.7. The private site management team shall implement the response action set forth in the approved final removal action workplan or remedial action plan and remedial design. The implementation of the response action may be conducted without oversight by the department.

25395.8. (a) Upon completion of a response action, the private site manager shall file a request for a certificate of completion from the department. The request for a certificate of completion submitted by a private site manager shall include all of the information required by the department, and, at a minimum, shall include all of the following additional information:

- (1) A summary of all response action taken.



(2) All sample results for a certified laboratory confirming that the site has been fully remediated as required by the final removal action workplan or remedial action plan and in accordance with the remedial design approved by the department.

(b) In addition, the department may require submittal of any or all of the following documentation:

(1) A north-south and east-west cross section of the site geology, that is signed by a geologist or geoscientist who is registered in the State of California, and that evaluates the hydrogeologic conditions of the site.

(2) Horizontal and vertical surveys of all wells, caps, and facilities that are required by the final removal action workplan or final remedial action plan approved by the department.

(3) As-built drawings of any physical construction that is required by the removal action workplan or remedial action plan approved by the department, and that is signed by an engineer registered in the State of California.

(4) Copies of land use controls that are required by the removal action workplan or remedial action plan approved by the department, and that have been recorded by the county recorder in the county in which the site is located.

(5) A plan for the implementation of any operation and maintenance measures that are required by the final removal action workplan or remedial action plan approved by the department.

(c) The department shall review the request for a certificate of completion, and shall approve or reject a request for certificate of completion within 30 days from the date of submittal by the private site manager. If a request is rejected, the department shall identify the principle reasons for the rejection and describe the actions needed to amend the application to adequately address the deficiencies that are identified by the department.

(d) If the department approves the request for a certificate of completion, it shall prepare a certification which shall include a certificate of completion, requirements for ongoing reporting and operation and maintenance, and a description of applicable land use controls of a site. The certification shall be provided to the project proponent, all known responsible parties, owners of properties located adjacent to the site, and shall be made available to the public.

25395.9. No designated officer or employee of the California Environmental Protection Agency or its constituent boards, departments, or offices shall serve as a private site manager or member of a private site management team for the first 12 months following the termination of the officer's or employee's appointment or employment with the agency, constituent board, department, or office.

25395.10. (a) The private site manager and each member of a private site management team shall sign and certify all work performed by, and or directed by, that person.

(b) The private site manager and each member of the professional staff of the private site management team shall have appropriate insurance as required by the department.

25395.11. Except as otherwise specified in this article, all the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and any other applicable regulation and guidance document or manual adopted or issued by the department, shall apply to sites approved for private site management. The requirements of Division 13 (commencing with Section 21000) of the Public Resources Code shall apply to response actions conducted pursuant to this article in the same manner, and to the same extent, that the requirements apply to response actions otherwise conducted pursuant to this chapter or Chapter 6.85 (commencing with Section 25396). If, at any time, the department finds that a private site manager or a private site management team is not in compliance with the requirements of this chapter or Chapter 6.85 (commencing with Section 25396), the department may, pursuant to this article, withdraw its approval for the conduct of a response action on the site.

25395.12. (a) The department shall conduct audits of a minimum of 25 percent of the sites where a private site manager or private site management team has conducted a site investigation or response action without oversight by the department, except with respect to cases where oversight is otherwise required under this article, and where the department has issued a certificate of completion.

(b) A private site manager and any member of a private site management team shall provide an authorized representative of the department with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files that are materially related to a response action conducted pursuant to this article.

(c) In any case where the department's audit finds that the performance of a private site manager or a member of a private site management team fails to meet the minimum standards of performance adopted pursuant to Section 25395.15, the department shall send the results of the audit to the Office of Environmental Health Hazard Assessment.

25395.13. (a) Any private site manager or member of a private site management team who commits any of the following acts shall be punished, upon conviction, by a fine of not less than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or both that fine and imprisonment, if the private site manager or any member of a private site management team does any of the following:



(1) Knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement that the private site manager or the private site management team submits to the department.

(2) Knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the private site management team keeps, or is required to keep, pursuant to any law.

(3) Knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the private site manager or the private site management team maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.

(4) Knowingly allows or orders any of the private site manager's or the private site management team's employees, agents, or contractors to do any of the actions specified in paragraphs (1) to (3), inclusive.

(b) Any private site manager or member of a site private management team who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) nor more than two hundred fifty thousand dollars (\$250,000) for each day of a violation, by imprisonment in the county jail for not more than one year, by imprisonment in the state prison for 16, 24, or 36 months, or by both that fine and imprisonment.

(c) Any private site manager or member of a private site management team who knowingly, at the time the manager or member takes any of the actions specified in subdivision (b), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than two hundred fifty thousand dollars (\$250,000) for each day of the violation.

(d) Each day that a violation of subdivision (a) occurs, or continues to occur, shall be considered a separate offense. A fine imposed pursuant to subdivision (a) shall not exceed, in the aggregate, twenty-five thousand dollars (\$25,000), and the term of imprisonment shall not exceed, in the aggregate, one year.

(e) Notwithstanding any other provision of law, all penalties collected pursuant to this section shall be transferred to the department for deposit in the trust fund for expenditure by the department, upon appropriation by the Legislature, to administer and enforce this article.

25395.14. The project proponent for a site subject to response action pursuant to this article shall fully reimburse the department

for all reasonable costs incurred by the department, including those costs associated with the department's involvement in the investigation, remediation, certification, and audit process at that site. Any of the reasonable costs that are incurred by the department which relate to the specific project costs, and that are not reimbursed by the project proponent shall be recovered from the responsible parties pursuant to Section 25360.

25395.15. The department shall, in consultation with the Office of Environmental Health Hazard Assessment, adopt minimum standards of performance that shall apply to the activities and conduct of private site managers and members of private site management teams that conduct response actions pursuant to this article. The standards shall be consistent with the requirements of this article and with generally accepted professional standards that apply to persons who engage in the types of work that are required to conduct hazardous substance release response actions pursuant to this chapter. The minimum standards of performance shall be adopted as expeditiously as possible, but not later than six months from the date that the department first begins accepting applications pursuant to Section 25395.3.

SEC. 2. Section 25570.3 of the Health and Safety Code is repealed.

SEC. 3. Section 25570.3 is added to the Health and Safety Code, to read:

25570.3. (a) The director, in consultation with the Department of Toxic Substances Control, the State Water Resources Control Board, the State Air Resources Board, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the Department of Consumer Affairs shall develop, adopt by regulation, and publicize criteria for, the voluntary registration of environmental assessors who have the experience or qualifications sufficient to conduct environmental assessments. The director shall determine criteria for the establishment of two classes of environmental assessors.

(b) In establishing criteria for the registration of class I environmental assessors the director shall consider all of the following:

(1) The level of experience, including a minimum of two years of experience in successfully assisting businesses, government agencies, or labor organizations in the assessor's general field of expertise.

(2) Recommendations from clients, colleagues, and professional associations.

(3) Skills or expertise that represent an area of specialty within a field, such as professional engineering or engineering geology, for which the state now offers a certification, licensing, or registration process.

(4) Pertinent specialized certification, licensing, or registration programs offered by professional associations or other private sector organizations.

(5) Specific areas of expertise, including, but not limited to, underground tank checks or removal, small generator waste reduction, recycling, treatment, and disposal, prevention and control of air emissions and water releases, assessment of soil or groundwater contamination, risk assessment and risk reduction recommendations, or occupational safety and health reviews.

(c) In addition to registration as a class I environmental assessor, an applicant for registration as a class II environmental assessor shall, in addition to any requirements specified by regulation, meet both of the following requirements:

(1) Possess a bachelor of science degree from an accredited college or university in a physical or biological science, engineering, or a related field.

(2) Have a minimum of eight years of professional-level environmental experience, acquired within the last 10 years, of which four years shall be professional-level site mitigation experience acquired within the last six years.

(d) The director may appoint an ad hoc advisory committee to assist in developing the requirements for the registration of class I and class II environmental assessors. The members of the ad hoc committee shall represent the range of professional skills that may be possessed by class I and class II environmental assessors, and shall be registered or certified in their respective professions by the State of California.

(e) The director shall require each applicant for registration as a class I or class II environmental assessor to pay the following fees:

(1) For a class I environmental assessor:

(A) A nonrefundable application fee of up to fifty dollars (\$50) for each applicant seeking registration as a class I environmental assessor.

(B) An annual fee of up to one hundred dollars (\$100) for registration as a class I environmental assessor.

(2) For a class II environmental assessor:

(A) A nonrefundable application fee of up to one hundred twenty-five dollars (\$125) for each applicant seeking registration as a class II environmental assessor.

(B) An annual fee of up to five hundred dollars (\$500) for registration as a class II environmental assessor.

(f) The director shall assess the fees specified in paragraphs (1) and (2) of subdivision (e) at a level sufficient to meet the costs of application processing, registration, listing and publication, audits, complaints, investigations, disciplinary proceedings, and such other activities that are reasonably necessary to administer and implement the environmental assessor registration program.

(g) Any applicant who is denied registration shall be notified in writing by a letter signed by the director stating the reasons for the denial. The applicant may respond to the registration denial by providing additional information for the purpose of clarifying the application, and may request reconsideration of the denial.

(h) (1) On or before March of each year, the director shall, in collaboration with associations representing small and medium-sized businesses, publish, prepare, and disseminate a list of registered environmental assessors that are listed by class.

(2) The list prepared pursuant to paragraph (1) shall be arranged in accordance with the types of tasks performed by the registered environmental assessor, and, at a minimum, shall specify the professional and employment affiliations and the specific area of expertise of the assessor, and shall indicate whether the assessor is a sales representative, owner, or part owner of a business that manufactures or distributes technology for hazardous substances or hazardous waste management. In addition, the list shall provide an alphabetical listing of firms that provide environmental assessment services and that employ registered assessors. The registered assessors employed by each firm shall be listed with the firm's name by class. The director shall include a written disclaimer of liability as part of the published list of registered assessors.

(i) Each environmental assessor shall obtain a renewal of registration every five years following the date of the initial registration or renewal of registration. The director shall determine a renewal fee that is sufficient to cover the reasonable costs incurred in reassessing the qualifications of the applicant for renewal. In considering whether to renew a registration, the director shall also consider any factual complaints regarding the work of that assessor.

(j) Notwithstanding any other provision of law, no state agency or employee of a state agency shall be held liable for any injury or damages resulting from the services provided by a registered environmental assessor listed pursuant to subdivision (h). In any litigation regarding the registration process or the list of assessors, the Attorney General shall defend a state employee or state agency involved with the development or implementation of the program specified in this chapter.

(k) The director may perform periodic audits of work performed and certified by class II environmental assessors, as necessary, to ensure the desired standard of performance. A registered class II environmental assessor shall provide an authorized representative of the director with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, with the exception of proprietary or other confidential information.



(l) The director shall rescind a class II environmental assessor's registration when an assessor's performance falls below the minimum required standards of performance adopted pursuant to Section 25395.15, as determined by an audit conducted by an authorized representative of the director pursuant to subdivision (k) or by the department pursuant to Section 25395.12. In addition to a failure to meet the minimum standards of performance adopted pursuant to Section 25395.15, any one of the following findings shall be sufficient grounds for the rescission of a registration:

- (1) Gross negligence.
- (2) Inexcusable neglect of duty.
- (3) Intentional misrepresentation of laboratory data or other intentional fraud.
- (4) Charging for services not rendered, or for performing services that are not reasonably necessary.
- (5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.
- (6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.
- (7) Conviction of a felony or misdemeanor involving moral turpitude.
- (8) Knowingly making a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for registration.

(m) The director shall adopt, by regulation, a procedure for the appeal of a rescission of registration, which shall be adopted on the same date that regulations which implement this section are adopted.

SEC. 4. Section 25570.4 is added to the Health and Safety Code, to read:

25570.4. Nothing in this article shall be construed to authorize a person registered as an environmental assessor pursuant to Section 25570.3 to practice civil, electrical, or mechanical engineering, or to exempt a registered civil, electrical, or mechanical engineer who is also a registered environmental assessor from Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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